



# **PLANNING COMMISSION AGENDA REPORT**

**VI.4**

**MEETING DATE: AUGUST 11, 2008**

**ITEM NUMBER:**

**SUBJECT: PLANNING APPLICATION PA-08-21  
ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE FOR MOSCOW DELI  
3015 HARBOR BOULEVARD**

**DATE: JULY 31, 2008**

**FOR FURTHER INFORMATION CONTACT: WENDY SHIH, ASSOCIATE PLANNER (714) 754-5136**

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## **PROJECT DESCRIPTION**

The applicant requests approval of a conditional use permit (CUP) and the Planning Commission make a finding of public convenience or necessity to allow the sale of beer and wine for off-site consumption for an existing mini-market (Moscow Deli).

## **APPLICANT**

Janelle P. Williams is the authorized agent for property owner Ali-Reza D. Vaziri.

## **RECOMMENDATION**

Approve PA-08-21 by adoption of Planning Commission resolution, subject to conditions.

  
WENDY SHIH  
Associate Planner

  
KIMBERLY BRANDT, AICP  
Asst. Development Services Director

## **BACKGROUND**

The property is located across the street from Costa Mesa Square (Target Center) between Nutmeg Place and Baker Street. It contains a 9,880 square-foot, multi-tenant commercial building. Moscow Deli is an ethnic market that occupies a 1,185 square-foot suite within the building. The applicant is requesting approval of a conditional use permit to allow the sale of beer and wine for off-site consumption.

Since the number of off-sale licenses to population in this area exceeds the countywide ratio (three licenses allowed; four exist), State law requires the City make a finding of "public convenience or necessity" before ABC (State Alcoholic Beverage Control) can issue the beer and wine license.

## **ANALYSIS**

According to the applicant, Moscow Deli is and will remain a specialty mini-market providing Russian foods and sundries. The market closes by 9 p.m. daily. The applicant would like to include the sale of Russian beer and wine for off-site consumption. The alcoholic beverages will not be refrigerated or served on-site.

Staff believes that the proposed beer and wine sales would complement the specialty mini-market and would not negatively impact the surrounding area. If Commission approves the conditional use permit and makes a finding of public convenience or necessity, standard conditions for mini-markets are recommended to ensure the market remains compatible with surrounding uses. The conditions include a requirement that the applicant purchase and transfer an existing license from a location within the City so that the citywide number of off-sale licenses does not increase.

According to Code Enforcement records, there have been no problems reported with the existing market. The Police Department has reviewed the request and has no objections to issuance of the proposed license.

## **GENERAL PLAN CONSISTENCY**

The General Plan permits a wide range of commercial uses within the General Commercial land use designation. The use is permitted in the C1 zone with a conditional use permit and is, therefore, consistent with the General Plan.

## **ALTERNATIVES**

The Planning Commission may consider the following alternatives:

1. Approve the CUP and make a finding of public convenience or necessity. This would allow ABC to issue a license to Moscow Deli for off-sale beer and wine.
2. Deny the application. If Commission denies the application, ABC will not issue a license to Moscow Deli to sell beer and wine.

**ENVIRONMENTAL DETERMINATION**

The conditional use permit is exempt from the provisions of the California Environmental Quality Act under Section 15301 for Existing Facilities.

**CONCLUSION**

Moscow Deli is a specialty mini-market. Allowing ancillary beer and wine sales would complement the market and provide a convenience to its customers. Therefore, staff recommends approval of the conditional use permit and Commission make the finding of public convenience or necessity.

Attachments: 1. Draft Planning Commission Resolutions for Approval and Denial  
 2. Applicant's Project Description Letter  
 3. Location Map  
 4. Plans

cc: Deputy City Manager - Dev. Svs.  
 Deputy City Attorney  
 City Engineer  
 Fire Protection Analyst  
 Staff (4)  
 File (2)

Ali-Reza D. Vaziri  
 66 Balboa Coves  
 Newport Beach, CA 92663

Janelle P. Williams  
 2418 Honolulu Ave., Ste. B  
 Montrose, CA 91020

File: 081108PA0821	Date: 072408	Time: 8:30 a.m.
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# ATTACHMENT 1

## RESOLUTION NO. PC-08-

### A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA APPROVING PLANNING APPLICATION PA-08-21

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY  
RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Janelle P. Williams, authorized agent for property owner Ali-Reza D. Vaziri, requesting approval of a conditional use permit for off-sale beer and wine for a specialty mini-market (Moscow Deli) and to make a finding of public convenience or necessity for the issuance of a type 20 (off-sale beer and wine) ABC license, located at 3015 Harbor Boulevard, in a C1 zone; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on August 11, 2008.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", and subject to the conditions contained in Exhibit "B", the Planning Commission hereby **APPROVES** Planning Application PA-08-21 and makes a finding for public convenience or necessity per Business and Professions Code Section 23817.7 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the Staff Report for Planning Application PA-08-21 and upon applicant's compliance with each and all of the conditions contained in Exhibit "B", as well as with compliance of all applicable federal, state, and local laws. Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

**PASSED AND ADOPTED this 11<sup>th</sup> day of August 2008.**

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Donn Hall, Chair  
Costa Mesa Planning Commission

STATE OF CALIFORNIA   )  
  )ss  
COUNTY OF ORANGE    )

I, Kimberly Brandt, secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution was passed and adopted at a meeting of the City of Costa Mesa Planning Commission held on August 11, 2008, by the following votes:

AYES:       COMMISSIONERS

NOES:       COMMISSIONERS

ABSENT:     COMMISSIONERS

ABSTAIN:    COMMISSIONERS

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Secretary, Costa Mesa  
Planning Commission

**EXHIBIT "A"****FINDINGS (APPROVAL)**

- A. The proposed use complies with Costa Mesa Municipal Code Section 13-29(e) because:
1. The proposed use is compatible and harmonious with uses on surrounding properties.
  2. Safety and compatibility of the design of the buildings, parking areas, landscaping, luminaries, and other site features including functional aspects of the site development such as automobile and pedestrian circulation have been considered.
  3. The project is consistent with the General Plan with the approval of a conditional use permit.
  4. The planning application is for a project-specific case and does not establish a precedent for future development.
- B. The information presented substantially complies with Costa Mesa Municipal Code Section 13-29 (g)(2) in that the proposed specialty beer and wine sales for a specialty mini-market is substantially compatible with developments in the same general area. Granting the conditional use permit will not be detrimental to the health, safety, and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, the sale of specialty beer and wine will be ancillary to and complement the specialty mini-market during normal retail hours (no late night sales). Public convenience or necessity would be served by the issuance of the ABC license, per Business and Professions Code Section 23817.7.
- C. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA under Section 15301 for Existing Facilities.
- D. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

**EXHIBIT "B"****CONDITIONS OF APPROVAL**

- Plng. 1. Prior to alcohol sales at this location, the applicant shall purchase and transfer an existing Alcoholic Beverage Control license from a location within the City.
2. The use shall be limited to the type of operation described in the staff report (i.e. specialty ethnic mini-market with ancillary specialty beer and wine sales, closes by 9 p.m. daily). Any change in the operational characteristics including, but not limited to, the hours of operation and nature and variety of products sold, shall require an amendment to the conditional use permit, subject to Planning Commission approval.
3. Wine shall not be sold in bottles or containers smaller than 750 milliliters.
4. No sale of beer in single cans or bottles (any size) shall be permitted. This restriction is not intended to prohibit the sale of such beverages in kegs or other types of containers, with a volume of two or more gallons, which are clearly designed to dispense multiple servings.
5. Beer, malt beverages, or wine coolers packed in 16-ounce containers or smaller may not be sold as single containers, but must be sold in manufacturer prep-packaged multi-unit quantities.
6. Beer or wine shall not be displayed or sold from an ice tub or any other type of portable refrigerated unit.
7. Applicant shall post signs inside and outside the premises prohibiting the on-site consumption of alcoholic beverages and loitering.
8. Applicant shall post signs inside and outside the premises in compliance with the City of Costa Mesa Municipal Code notifying the public with regard to the prohibition of open containers of alcohol beverages.
9. Except as permitted by the City of Costa Mesa Municipal Code for temporary window signs, windows shall not be blocked or obscured.
10. Exterior advertising, including temporary window signage, shall comply with all the City's sign regulations. Exterior signage indicating the availability of alcoholic beverages is limited to the name of the business. Additional exterior advertisements promoting or indicating the availability of alcoholic beverages are prohibited. Interior displays of alcoholic beverages or signs which are clearly visible from the exterior at the closest public street or sidewalk, shall constitute a violation of this condition.
11. The applicant shall maintain free of litter all areas of the premises under which applicant has control.
12. The business shall be conducted at all times in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The business owner shall institute whatever security and operational measure are necessary to comply with this requirement.
13. The conditional use permit herein approved shall be valid until revoked, but shall expire upon discontinuance of the activity authorized hereby for a period of 180 days or more. The conditional use permit may be referred to the Planning Commission for modification or revocation at any time if the conditions of approval have not been complied with, if the use is being

operated in violation of applicable laws or ordinances, or if, in the opinion of the development services director or his designee, any of the findings upon which the approval was based are no longer applicable.

14. A copy of the conditions of approval for the conditional use permit must be kept on premises and presented to any authorized City official upon request. New business/property owners shall be notified of conditions of approval upon transfer of business or ownership of land.



**RESOLUTION NO. PC-08-**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF COSTA MESA DENYING PLANNING APPLICATION  
PA-08-21**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY  
RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Janelle P. Williams, authorized agent for property owner Ali-Reza D. Vaziri, requesting approval of a conditional use permit for off-sale beer and wine and to make a finding of public convenience or necessity for the issuance of a type 20 (off-sale beer and wine) ABC license, located at 3015 Harbor Boulevard, in a C1 zone; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on August 11, 2008.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", the Planning Commission hereby **DENIES** Planning Application PA-08-21 with respect to the property described above.

**PASSED AND ADOPTED this 11<sup>th</sup> day of August 2008.**

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Donn Hall, Chair  
Costa Mesa Planning Commission

**EXHIBIT "A"**

**FINDINGS (DENIAL)**

- A. The proposed use does not comply with Costa Mesa Municipal Code Section 13-29(e) because:
  - 1. The proposed use is not compatible and harmonious with uses on surrounding properties.
  - 2. Safety and compatibility of the design of the buildings, parking areas, landscaping, luminaries, and other site features including functional aspects of the site development such as automobile and pedestrian circulation have been considered.
  - 3. The project is not consistent with the General Plan.
- B. The information presented does not comply with Costa Mesa Municipal Code section 13-29(g)(2) because the proposed use is not compatible with developments in the same general area. Granting the conditional use permit will be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Granting the conditional use permit will allow a use, density, or intensity which is not in accordance with the general plan designation for the property.
- C. The Costa Mesa Planning Commission has denied PA-08-21. Pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a), CEQA does not apply to this project because it has been rejected and will not be carried out.
- D. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

ATTACHMENT 2  
*WILLIAMS LAND USE SERVICES*



Moscow Deli 3015 Harbor Blvd. Costa Mesa, CA 92626  
Conditional Use Permit Attachment

This establishment is located in the C1 zone where retail establishments may be allowed to sell beer and wine with proper review under the Conditional Use Permit process, with approval and license from the State of California Alcoholic Beverage Control.

Moscow Deli is a neighborhood establishment, serving residents, patrons and employees of local businesses, with special emphasis on the ethnic foods and sundries of Russia. The existing use as an establishment selling specialty goods will remain the same.

The addition of specialty beers and wines from Russia is a natural accompaniment to the other goods offered. The patrons have indicated a desire to have these items to take home, since there are so few establishments offering Russian beer and wine for off site consumption. The alcoholic beverages will not be refrigerated and will not be served at the location.

The Moscow Deli and parking areas have been in operation for several years without any detrimental effects to the public health or safety, the general welfare of the neighborhood, or the environment. The sale of alcoholic beverages will be an accessory to the primary market use. The incidental sales of alcoholic beverages in conjunction with the retail market will not cause any conflicts with area development, as the location is well situated with respect to other facilities, and will not impact property values or normal development within the surrounding area. All structures, parking, streets and utilities are existing and adequate for the existing establishment. Parking provision is available in the parking lot on-site. The existence of Moscow Deli has not created an impact on traffic patterns in the area or created any burden on public facilities or infrastructure and it is not expected to with the addition of beer and wine for off site consumption.

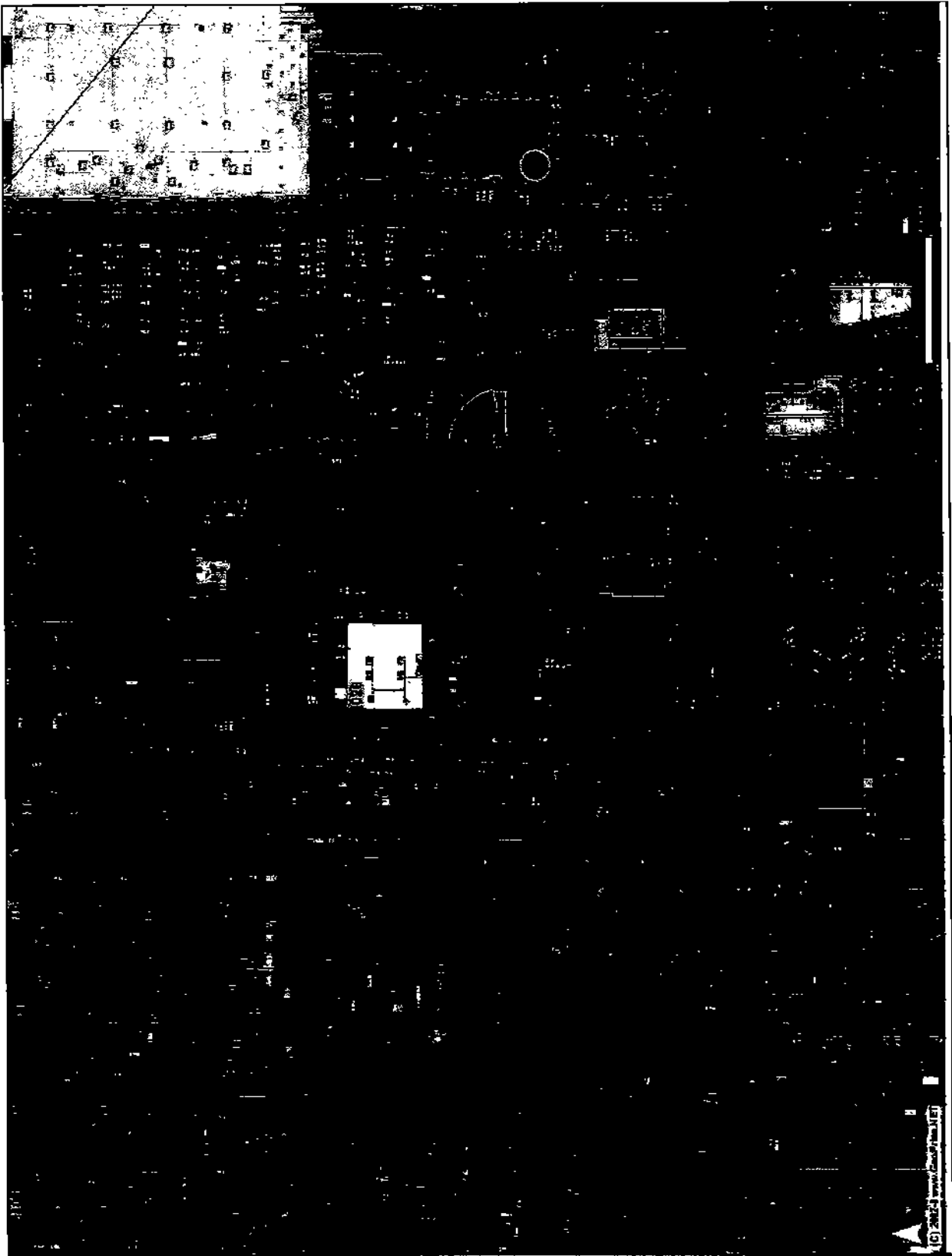
Security cameras are located within the establishment, and the establishment is staffed by the owners and mature individuals who are familiar with all ABC rules and regulations of the State of California. Alcoholic beverages will be placed away from the door to discourage theft or loitering.

Moscow Deli has a reputation throughout Southern California for its authentic food including imported goods and food prepared in the small kitchen by the owner, who is a trained chef. The property is well maintained, the merchants are long time business owners in Costa Mesa. They take pride in their operation, keeping it safe and well maintained at all times. The approval of the CUP will allow the applicant to better serve their customer base. We hereby request approval of Moscow Deli's application for Conditional Use Permit to sell beer and wine for off-site consumption (Type 20 ABC license).

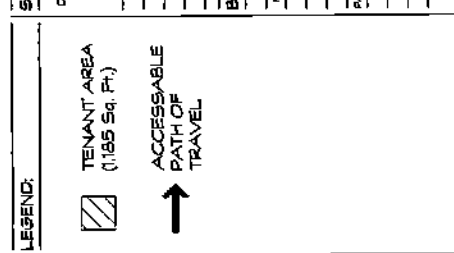
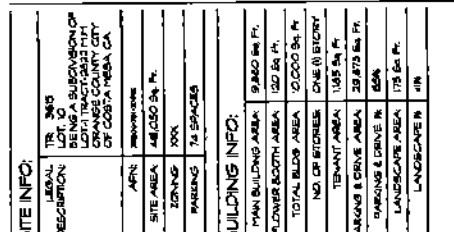
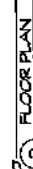
Harbor Moscow Deli Costa Mesa CUP Beer Wine

# ATTACHMENT 3

## LOCATION MAP



PROSECUTOR  
SIXE HARBOR BLVD.  
CORONA, CALIF. 92625



# City of Costa Mesa

## Interoffice Memorandum

**To:** PLANNING COMMISSION  
**From:** WENDY SHIH, ASSOCIATE PLANNER *WBS*  
**Date:** August 4, 2008  
**Subject:** SUPPLEMENTAL INFORMATION FOR PA-08-21  
3015 HARBOR BOULEVARD (MOSCOW DELI)  
PLANNING COMMISSION MEETING OF AUGUST 11, 2008

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On July 31, 2008, the applicant submitted the attached letter in response to staff's recommended condition of approval (number one) requiring the purchase and transfer of an existing Alcoholic Beverage Control (ABC) license from a location within the City prior to alcohol sales. However, the applicant is currently in escrow for the purchase of a license from the City of Buena Park, and requests that this condition be deleted since it is a unique mini-market which will sell specialty Russian beer and wine.

In 1997, the City Council adopted a list of development and operational standards for mini-markets, convenience stores, and liquor stores. These standard conditions were formally recognized in 2002 under Ordinance 01-30 amending the Zoning Code relating to these types of stores. The condition requiring purchase of an off-sale alcohol license from a location within the City is routinely applied whenever sales of alcoholic beverages for off-site consumption are proposed. However, the standard conditions may be applied on a case-by-case basis to ensure compliance with the necessary findings for approval of a conditional use permit.

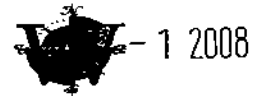
Upon further review of the applicant's request, staff believes that deletion of this condition would not negatively impact surrounding properties or be detrimental to the general welfare of the public since additional conditions are included to ensure this location remains a specialty mini-market. A traditional mini-market, convenience store, or liquor store would require a separate review and approval by the Commission.

Attachment: Amendment to CUP Request dated July 31, 2008

cc: Deputy City Manager - Dev. Svs. Director  
Deputy City Attorney  
City Engineer  
Fire Protection Analyst  
Staff (4)  
File (2)

Ali-Reza D. Vaziri  
66 Balboa Coves  
Newport Beach, CA 92663

Janelle P. Williams  
2418 Honolulu Ave., Ste. B  
Montrose, CA 91020



## Williams Land Use Services

*July 31, 2008 AMENDMENT TO CUP REQUEST for PA -08-21 MOSCOW DELI*

It has come to our attention that there could be a condition of approval stating that our ABC license must be procured from within the city limits of Costa Mesa. If imposed, this condition would cause an unexpected, unnecessary hardship to the applicants, and needless inconvenience to their loyal customers.

Moscow Deli of Orange County Inc. opened for business in 1996. Owners Yelena Kagan and Yelena Kasimov are Russian immigrants who came to America with their husbands to realize their "American Dream." Together, they have operated this business to provide the community, which includes patrons of Russian ancestry and the immigrant community, local business, residents in the area, and customers from all walks of life throughout Costa Mesa, Orange County and beyond, with the only store and deli that sells authentic imported Russian products in the area.

Besides packaged imported goods, the location has a deli that offers a wide variety of home-made Russian foods for patrons to choose from. Hot and cold food is prepared on the premises by Mrs. Kagan and Mrs. Kasimov, who are formally trained chefs. Mrs. Kagan and Mrs. Kasimov take pride in their Russian heritage, and this market and deli is a reflection of that pride, and their way of sharing the Russian heritage, food, household goods and homeland customs with the Costa Mesa and Orange County community.

The unique nature of this store and deli cannot be overstated. This premises is not like any other in the area. The products sold at Moscow Deli are not available anywhere else in Costa Mesa, or in the greater area of Orange County. To add to the unique nature of their business, they hope to respond better to patron requests and be able to provide their patrons an opportunity to purchase Russian beers and wines.

The patrons of Moscow Deli have been requesting beer and wine from their Russian homeland for the past twelve years. Finally, in response to these requests, and in all good faith, the applicants decided to make the financial investment to acquire their ABC type 20 license from within Orange County pursuant to and following all State of California requirements and meeting every test (DOJ, FBI, and financial checks). Their ABC license consultant was successful in locating a Type 20 license from an oil company in the City of Buena Park.

Examples of Russian beer and wine brands Moscow Deli hopes to sell include the following:

Beer: Sarmat, Zhigulevskoe, Baltika, Chernihivske, Sevastopolskoe, Lvivske, Persha, Pryvatna, Brovarnya, Moskovsoye, Nevskoe, Klinskoye

Wine: Tsimlanskoe Winery, Rostov region; Semigor Winery, Novorossisk district; Mirny Winery, Temruk district; Saook Durye Winery, Krimsk district; Kavkaz Winery, Anapa district; Karakezidi Winery, Novorossisk district, and Mashuk Winery, Stavropol region, Kingzmarauli, Chernie Glaza.

This kind of selection is likely nonexistent anywhere else in Costa Mesa or even in neighboring cities. As such, the imposition of the condition would be tantamount to a penalty. Another consideration is that Moscow Deli will not refrigerate their alcoholic goods. They will be sold strictly for off-site refrigeration and consumption.

The day after we submitted our application for the Conditional Use Permit, we sent the Planner an email attachment of a copy of our pending license transfer from Buena Park. At that time, we could have been informed, but at no time was it disclosed to us that an approval would be conditioned so that the license could only be transferred from within the city limits. By the time we applied for the CUP, the applicants were already in escrow for the ABC license.

We filed our CUP application on July 7th. It was not until July 23rd that it was finally disclosed to us in an email that this condition would likely be imposed. The ABC license transfer, at this time, is nearly finished (in escrow), pending the approval of the CUP and the letter of public convenience and necessity.

Additionally, while preparing the ABC application paperwork, the ABC consultant's company contacted the Costa Mesa City Planning Department in order to complete the ABC Zoning Affidavit. The type of ABC license was discussed, and the Planning Department advised that a Conditional Use Permit would be required, and filing/submittal information was provided. At no time was the consultant's licensing representative notified of a restriction about transferring ABC Type 20 licenses from outside of Costa Mesa.

It is important to remember that each CUP request should rise or fall on its own merits, and conditions of approval should be imposed on a case by case basis according to the specifics of the proposed use. In this case, imposing a blanket restriction intended for the typical retailer would cause an unnecessary hardship to a very unique small business with a twelve year history in Costa Mesa; a mom-and-pop family-owned store with a loyal customer base and strong community ties.

Contrast the above with the fact that the large retailers (Target, Ralph's, Rite-Aid, 7-11, Arco AM-PM), and who all sell the same brands to the general public have actually created the "undue concentration." There is nothing unique about their operations, but they have saturated the market with over-availability of exactly the same products, creating undue concentration nonetheless.

Fair business competition and your consideration of this request for exception will allow these vested operators to continue serving the community, with pride of ownership in their business. The owners are responsible and committed to taking any and all steps necessary to insure that all beer and wine will be purchased, stored, and sold in a law-abiding manner consistent with their general conduct of the past twelve years as good merchants in Costa Mesa.

Mrs. Kagan and Mrs. Kasimov are very proud to say their store has provided a desired service to their valued customers, the surrounding communities, and they have also been a good neighbor. They will continue that same commitment to this community regardless of the outcome of this process.

We respectfully request that upon review of the above information, you will agree that there should be no condition placed on the origin of the ABC license, also recognizing also that the license has already been secured.

Possible suggested alternatives to the condition might include:

- Mandatory attendance at the ABC L.E.A.D. training program (Licensee Education on Alcohol and Drugs), which is an optional program offered by California Alcoholic Beverage Control; and
- Limit the retail floor space area for beer and wine display to no more than 15%; and
- No refrigeration of alcoholic goods.

We appreciate your thoughtful consideration of this most important request.

